IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14..03..2005

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THE HON'BLE MR.MARKANDEY KATJU, CHIEF JUSTICE
and
THE HON'BLE MRS.JUSTICE PRABHA SRIDEVAN

W.A.Nos.1048 to 1052 and 1092 to 1094 of 1998

1. The Airport Officer,
Salem Airport, Salem.

2. Airport Authority of India,
rep. by its Regional Executive Director,
Meenampakkam,Chennai-27...Appellants in all the
Writ Appeals.

Vs.

M.Kalaikovan ..Respondent in W.A.1048 of 1998
M.Thanga Raj ..Respondent in W.A.1049 of 1998
Kumar (alias) Ammachi ..Respondent in W.A.1050 of 1998
Perumalsamy ..Respondent in W.A.1051 of 1998
Annamalai ..Respondent in W.A.1052 of 1998
Arumugham ..Respondent in W.A.1092 of 1998
S.A.Palanisamy ..Respondent in W.A.1093 of 1998
R.Ravi ..Respondent in W.A.1094 of 1998

PRAYER: Writ Appeals filed against the common order of the learned single Judge dated 19.06.1998, passed in W.P.Nos.2719 and 3407 to 3413 of 1998, as stated therein.

For Appellants :: Mr.C.Godwin
For Respondents :: Mr.T.Velumani

J U D G M E N T

THE HON'BLE THE CHIEF JUSTICE

These writ appeals have been filed against the common order of the learned single Judge dated 19.06.1998.

2. We have heard the learned counsel for the parties and perused the record.

3. In Writ Petition No.3412 of 1998 (which we are taking as leading case) the petitioner has alleged that the 2nd

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respondent in the writ petition (2nd appellant herein) is a quasi-governmental organization having control over all airports in India, and in charge of maintenance, operation and administration of airports. The respondent –1 (1st appellant herein) is the Airport Officer in charge of Salem Airport.

4. The airport authority recruited contract labourers for watch and ward and conservancy services in the Salem Airport through a contractor viz., M/s.New Everest Security Services in the year 1994. It is alleged that the airport authority has not recruited any employees of their own for sweeping, dusting and watching of the buildings, even though these are works said to be of a perennial nature. The writ petitioner in W.P.No.3412 of 1998 was recruited by the 1st respondent (1st appellant herein) as security personnel to guard the building of the airport in August 1995 through a contractor M/s.New Everest Security Services on a monthly salary of Rs.600/-, which was further increased to Rs.700/- per month later on. It is alleged that the writ petitioner in W.P.No.3412 of 1998 was rendering his services at Salem Air Port to the satisfaction of the 1st respondent (1st appellant herein). It is alleged that he had to report for duty before the first respondent, and perform his duties as per the instructions and directions of the 1st respondent. In paragraph – 8 of the petitioner's affidavit it is alleged that the principal employer (Airport Authority) has not provided any facilities like Medical Facilities, Provident Fund, Gratuity, Over Time allowances, etc., to the contract labourers, and the working conditions provided by the employer to them was very poor. The facilities and allowances of the regular service personnel were not extended to the contract labourers like the petitioner therein. Hence, it is alleged that there was discrimination and violation of Article 14 of the Constitution of India.

5. It is alleged that petitioner's services as security were utilised by the 1st respondent continuously for more than 950 days. It is alleged that the period of contract was being extended periodically every year. However, the contractor M/s.New Everest Security Services has informed that the contract will not be further extended, and the petitioner's services will be terminated after the expiry of the contractual period. The contract awarded to M/s.New Everest Security Services lapsed on 16.03.1993. According to the oral information given to the writ petitioner by the contractor, he will be losing his job on 16.03.1998. Hence, the petitioner filed the Writ Petition No.3412 of 1998 praying for continuity of service and regularisation. The petitioner relied on the notification dated 09.12.1976 issued under Sections 19(1) and (2) of the Contract Labour (Regulation and Abolition) Act, 1970. He has also alleged that in pursuance of this notification the recruitment of contract labour for the posts of sweeping, dusting and watching of buildings have been abolished and no principal employer is permitted to recruit contract labourers thereafter for the above services. However, despite this notification, the respondents have been recruiting contract labourers. Hence, it was

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prayed that the contract labourers should be deemed to be the employees of the principal employer and their services should be regularised. The petitioner relied on the decision of the Supreme Court in *Air India Statutory Corporation Vs. United Labour Union, 1997 (9) SCC 377.*

6. A counter affidavit has been filed in the aforesaid writ petition and we have perused the same. In paragraph – 4 of the same it is alleged that the 2nd respondent is a statutory authority created under the Airports Authority of India Act, 1994 by merging the National Airports Authroity with the International Airports Authority of India. The National Airports Authority came into existence in the year 1986 by Act 64 of 1985.

7. In paragraph – 5 of the counter it is alleged that the Salem Airport is not an establishment within the meaning of Section 2(e) of the Contract Labour (Regulation and Abolition) Act, 1970, since it had employed only 13 contract labourers, whereas as per Section 1(4) of the Contract Labour (Regulation and Abolition) Act, 1970, the Act will only apply to establishments in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labour. Hence, it is alleged that the Act has no application to the Salem Airport.

8. In paragraph – 6 of the Counter it is alleged that the contract for watch and ward and conservancy at Salem Airport was originally awarded by the then National Airports Authority on 17.03.1994. The said contract was being extended from time to time and the first respondent has been making payment to the contractor every month towards the cost of his services. The terms and conditions are governed by the specific contract entered into between the Airport Authority and the contractor.

9. As regards the notification dated 09.12.1976 issued by the Central Government under Section 19 of the Contract Labour (Regular and Abolition) Act, 1970 it is alleged in paragraph – 8 of the counter affidavit that the said notification has got no application to the respondent-establishment, since the respondent-establishment is totally different entity functioning under the Airport Authorities of India Act, 1994. The competent authority has not issued any notification under Section 10 of the Act prohibiting contract labour in the respondent-establishment.

10. In paragraph – 9 of the counter affidavit it was denied that the employment of the petitioner is deemed to be in the regular service of the respondent – establishment. In paragraph – 10 it was alleged that the proper remedy for the petitioner as held by the Supreme Court and this Court is that the petitioner has to raise an industrial dispute under the Industrial Disputes Act, 1947 for adjudicating the controversy. It was further alleged that the petitioner was not sponsored through the Employment Exchange and regularisation of his service would violate the provisions of Employment Exchange (Compulsory Notification of Vacancies) Act,

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1959. It was further alleged that the petition is liable to be dismissed for non-joinder of necessary party viz., the contractor.

11. The learned single Judge has based his order on the decision of the Supreme Court in *Air India Statutory Corporation Vs. United Labour Union, 1997 (9) SCC 377* (supra). However, that decision has been subsequently overruled by a Constitution Bench decision of the Supreme Court in *Steel Authority of India Vs. National Union Waterfront Workers, JT 2001 (7) SC 268 = 2001 (7) SCC 1.* In the said Constitution Bench decision the Supreme Court has held that the contract labourers are not entitled to get automatic absorption and these employees have to approach the appropriate authority for adjudication of their claim for absorption as regular employees. Thus, the very base of the decision of the learned single Judge has now disappeared, and hence the impugned order of the learned single Judge cannot be sustained, and the writ appeals have to be allowed. The respondents in the writ appeals had to approach the appropriate authority for establishing their claim for absorption as regular employees.

12. Apart from that, it is alleged by the appellants that there are no aircraft operations in the Salem Airport, since many years, but still the contract employees are continuing to get their salaries, in view of the interim orders of this Court passed on 16.09.1998 in C.M.P.Nos.11645, 11650 to 11653 and 12090 to 12092 of 1998 in W.A.Nos.1048 to 1052 and 1092 to 1094 of 1998, pending writ appeals, though there is no work for them. The appellants have filed affidavits on 07.03.2005 in the pending appeals stating that there are no aircraft operation in Salem Airport, and the employees are getting salaries without doing any work, and in view of that the appellants are incurring heavy expenditure every month for paying salaries to these contract labourers, although there is no work for them. These allegations have not been refuted. We fully agree with the submission of the learned counsel for the appellants that the respondents cannot be paid money for doing nothing. After all payment of salary, etc., is made for work done, and not for lying idle.

13. In view of the above, these writ appeals are allowed, and the impugned judgment of the learned single Judge is set aside. The interim orders of this Court passed on 16.09.1998 in C.M.P.Nos.11645, 11650 to 11653 and 12090 to 12092 of 1998 in W.A.Nos.1048 to 1052 and 1092 to 1094 of 1998, pending writ appeals are vacated. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Airport Officer,
Salem Airport, Salem.

2.The Regional Executive Director,
Airport Authority of India,
Meenambakkam, chennai-27.

One cc to Mr.C.Godwin, advocate (SR.No.12027)

W.A.Nos.1048 to 1052 &
1092 to 1094 of 1998.

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